P.J. DICK INCORPORATED

CONTRACT NO. V101CC0111

VA MEDICAL CENTER
ANN ARBOR, MICHIGAN

VABCA-5597R,
5836R-5850R,
5951R-5965R,
6017R-6031R,
6061R-6075R

William E. Dorris, Esq., Kirkpatrick Stockton LLP, Atlanta, Georgia, for the Appellant.

Kenneth B. MacKenzie, Esq., Trial Attorney; ***Charlma J. Quarles, Esq.,*** Deputy Assistant General Counsel; and ***Phillipa L. Anderson, Esq.,*** Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE KREMPASKY
ON
APPELLANT'S MOTION FOR RECONSIDERATION

Appellant, P. J. Dick Incorporated (PJD) has timely moved for reconsideration of our decision in ***P.J. Dick Incorporated***, VABCA Nos. 5597, *et. al*, 01-2 BCA ¶ 31,647. Familiarity with this decision is presumed.

We have before us PJD's MOTION FOR RECONSIDERATION and the Department of Veterans Affairs' reply opposing the MOTION.

DISCUSSION

The primary purpose of reconsideration is to allow a party to present significant, newly discovered evidence or evidence not readily available at the time of the principal decision or to point out the Board's material mistake or oversight of fact or law. Such motions not alleging newly discovered evidence and which merely repeat arguments fully considered by the Board in reaching its decision are ordinarily denied. ***Nitro Electrical Corporation,*** VABCA No. 3777R, 95-2 BCA¶ 27,672; ***Saturn Construction Co., Inc.***, VABCA No. 2600R, 88-3 BCA ¶ 21,183; ***Dawson Construction Company, Inc.,*** VABCA No. 1711, 85-1 BCA ¶ 17,788.

PJD asks for our reconsideration based on: 1) The Board's arithmetical error in computing the number of days of suspension for the combined directives delay; 2) The Board's incorrect reading of the parties' STIPULATION ON QUANTUM that resulted in the Board's failure to give effect to the stipulation by denying PJD's recovery of unabsorbed home office overhead costs; and, 3) the Board's failure to correctly interpret the evidence in the record proving that PJD was on "standby" during periods of suspension of work.

ARITHMETICAL ERROR

The Board, in the principal decision, found PJD entitled to $106,796 for its claim denoted as the "Combine Directives" delay, which was the subject of the appeals in VABCA-5951-65. This holding, in part, was predicated on our finding that PJD was entitled to recover for 16 days of field overhead for a suspension of work. We found 164 of the 201 calendar days of delay ascribed to the Combined Directives delay was attributable to a contract change that occurred in the period between August 6, 1996 to January 12, 1997, during which PJD was revising coordination drawings.

PJD correctly points out that the period August 6, 1996 to January 12, 1997 encompasses 159, not 164 calendar days. In its REPLY to PJD's MOTION, the Government acknowledges PJD's arithmetical calculation. Consequently, PJD is entitled to recover for 21 days of field overhead based on the Board's analysis in the principal decision. This entitles PJD to recover the following amount for the Combined Directives delay at the stipulated field overhead rates:

CONTRACTOR	DAYS	DAILY FIELD OVERHEAD RATE	TOTAL
P.J. Dick	21	$2,251	$ 42,271
Robert Irsay	21	$1,283	$ 26,943
Kent Electric	21	$1,683	$ 35,343
EMI	21	$ 824	$ 17,304
Laso	21	$ 369	$ 7,749
Subtotal			$134,610
ACT Costs			$ 3,832
Subtotal			$138,442
Liab. Ins.@.38%			$ 526
Total			$138,968

UNABSORBED HOME OFFICE OVERHEAD

PJD asserts that the parties, in their STIPULATION ON QUANTUM, intended that PJD would receive unabsorbed home office overhead (Eichleay) damages for any periods of delay for which the Board found PJD entitled to an equitable adjustment under the SUSPENSION OF WORK clause. In support of its position, PJD cites us to the VA's RESPONSE BRIEF wherein the VA conceded both PJD's entitlement to some additional contract performance time under the SUSPENSION OF WORK clause and damages, including Eichleay damages, in accordance with the STIPULATION ON QUANTUM for the time it conceded.

The STIPULATION ON QUANTUM (Exhibit J-2) in relevant part states:

> [i]t is hereby stipulated that for any days of delay for which it is determined Appellant is entitled to compensation under the Suspension Of Work Clause in any of these appeals, Appellant's [PJD] recovery shall be calculated by multiplying that number of days of delay by the following daily rates without the need for further proof of damages . . ."

Thus, in the plain language of the STIPULATION, the daily field and home office overhead rates set forth therein apply when PJD is determined to be entitled to an equitable adjustment under the SUSPENSION OF WORK clause. In the principal decision, we made it clear that proof that its forces were on "standby", in addition to the other prerequisites for proving entitlement to an equitable adjustment under the SUSPENSION OF WORK clause, was required to establish PJD's entitlement to Eichleay damages.

We agree with PJD's arguments that it is in the Board's and the parties' interest that we honor stipulations and we have done so here. PJD would have us read the STIPULATION that the VA agreed that PJD was entitled to Eichleay damages in addition to the daily home office overhead rate for suspensions of work. In its REPLY to the MOTION FOR RECONSIDERATION, the VA posits "[t]he clear language of the parties' stipulation is the best evidence," a position with which we agree. The STIPULATION, by its terms, relates to quantum and not entitlement. PJD points out in its MOTION that it and the VA agreed to the STIPULATION with full cognizance of the Federal Circuit's ***West v. All State Boiler, Inc.,*** 146 F.3d 1368 (Fed. Cir. 1998) and ***Melka Marine, Inc. v. United States***, 187 F.3d 1370 (Fed. Cir. 1999) decisions. In light of this knowledge and the language of the STIPULATION we see no reasonable basis to conclude, despite its protestations, that PJD's burden to prove that it was on standby was fulfilled by the STIPULATION and the language of the VA's REPLY BRIEF.

In the principal decision, we found that PJD provided no evidence that it was on standby and held that it had not proven its entitlement to recover Eichleay costs as part of an equitable adjustment for a suspension of work. In so holding, we also noted that the record evidence showed that PJD was able to progress other substantial work during the suspension periods. We also referenced evidence in the record regarding PJD's billings and its successful proof of acceleration as evidentiary indications that it was not on standby. PJD now argues that the billing records showing reductions in billings during certain suspension periods, and the fact that there were periods of suspension recognized in the principal decision that were not concurrent with the acceleration period, proves that it was on standby. Even were we to consider these new arguments, something we normally do not do in the context of a MOTION FOR RECONSIDERATION, they do not overcome our basic conclusion that PJD provided neither evidence nor allegation that it was on standby. Moreover, and more significantly, the record clearly shows that PJD continued to perform other substantive Contract work during the periods of suspension.

DECISION

For the foregoing reasons, P. J. Dick, Incorporated's MOTION FOR RECONSIDERATION of our decision in ***P.J. Dick Incorporated***, VABCA Nos. 5597, *et. al*, 01-2 BCA ¶ 31,647 is **GRANTED** in part and **Denied** in part. Accordingly, the decision in ***P.J. Dick Incorporated***, VABCA Nos. 5597, *et. al*, 01-2 BCA ¶ 31,647 is hereby revised as follows.

TOTAL JUDGMENT

The total judgment to which P. J. Dick Incorporated is entitled is increased from $1,886,360 to $1,918,262.

VABCA-5951-5965 Combined Directives

The judgment to which P. J. Dick Incorporated is entitled for the appeals VABCA-5951-98, 5960, 5964, 5965 is hereby increased from $106,796 to $138,968 plus interest pursuant to the CONTRACT DISPUTES ACT from March 24, 1999, the date the Contracting Officer received the claim giving rise to the above referenced appeals.

All other terms and conditions of the decision in ***P.J. Dick Incorporated***, VABCA Nos. 5597, *et. al*, 01-2 BCA ¶ 31,647 remain unchanged.

DATE: **January 15, 2002**

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RICHARD W. KREMPASKY
Administrative Judge
Panel Chairman

We Concur:

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MORRIS PULLARA, JR.
Administrative Judge

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WILLIAM E. THOMAS, JR.
Administrative Judge